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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,423	07/10/2001	Michael A. Lloyd	24717-707	8239
28960	7590	10/28/2005		
HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			EXAMINER NGUYEN, PHUOC H	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,423

Applicant(s)

LLOYD ET AL.

Examiner

Phuoc H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/8/05, 7/25/05, 8/16/05, 9/12/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-13 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/25, 8/16, 9/12/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. This office action is in response to the applicants Amendment filed on 07/08/2005, 07/25/2005, 08/16/2005, and 09/12/2005.

3. Claims 1-20 are pending in this application. Claims 1, 9, 14, and 17 are independent claims. In Amendment, claims 9-13 and 18-20 are withdrawn from consideration. This Office Action is made non-final after RCE filed August 8, 2005.

4. Amendment received on July 8, 2005 has been entered into record. Claims 1-8, and 14-17 are presented for further consideration and examination.

5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6 and 17 are rejected under 35 U.S.C. 103(a) as being obvious by Case et al. (Hereafter, Case) U.S. Patent 6,601,098 in view of Aoki et al. (Hereafter, Aoki) U.S. Patent 6,757,255.

8. Regarding claims 1 and 17, Case discloses a method of measuring a performance of a route in an internetwork, the route coupling an internetwork server to a terminal on the internetwork (Figure 4), the method comprising: at a frequently trafficked portal on the internetwork, detecting a request for a web page from the terminal, wherein the web page is at least partially stored at the frequently trafficked portal (e.g. server receives a request for URL from a client, Figures 3b and 4; and col. 7, lines 4-8 and 43-44); in response to the request for the web page, downloading the web page to the terminal via the internetwork, from the web page, retrieving a Uniform Resource Locator for a web object referenced in the web page (e.g. code with embedded next request URL or the server returns an HTML code page to the client) and resolving the URL to the internetwork server (e.g. server send client the page temporarily moved code with embedded next request URL, (Figure 4 (400,415,405,420); col. 7 lines 8-14, 62-64; and col. 8 lines 17-24); detecting a request for the web object from the terminal at the internetwork server (Figure 4 (420); col. 7, lines 17-20; and col. 8 lines 17-23, wherein the client strips off all the objects from the HTML code page and send the request to the servers); in

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response to the request for the web object, sending the web object from the internetwork server to the terminal (Figure 4 (460); col. 7 lines 20-25; and col. 8 lines 39-47, the server response to all the get objects from the client); and concurrent with sending the web object, measuring a Round Trip Time (RTT) from packets sent between the internetwork server and the terminal (col. 8, lines 28-33); however, Case does not disclose the RRT is done on the transport protocol layer.

Aoki et al. disclose in Figures 4-5 the step of measuring RRT on the transport protocol layer as a third layer (e.g. from top) of the OSI reference model (e.g. Figures 4-5, col. 1 lines 15-25, col. 2 lines 7-15, col. 3 lines 35-57, and col. 4 lines 25-39) wherein the transport protocol layer is a layer in OSI responsible to controlling the TCP connections which the sender times how long it takes for packets to travel back and forth.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention is made to implement or measuring the RRT on the transport protocol layer as a third layer of OSI as seen in Aoki et al.'s invention into Case's invention because it would enable to measuring the RRT of network packets precisely (e.g. col. 2 lines 5-14).

9. Regarding claims 2-3, Case further discloses the web page is at least partially encoded in a markup language and markup language is the Hyper Text Markup Language (inherently, HTML defines the structure and layout of a web document (e.g. web page)) (Figures 3B and 4).

10. Regarding claims 4 and 5, Case further discloses the sending the web object from the internetwork server to the terminal is performed via a Hyper Text Transfer Protocol (HTTP) and the Hyper Text Transfer Protocol is HTTP v 1.0 (col. 6, lines 35-48).

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11. Regarding claims 6, Case further discloses the Hyper Text Transfer Protocol is HTTP v 1.1 (col. 7, lines 4).

12. Claims 7 and 8 rejected under 35 U.S.C. 103(a) as being obvious over Case et al. (Hereafter, Case) U.S. Patent 6,601,098 in view of Aoki et al. (Hereafter, Aoki) U.S. Patent 6,757,255, as applied to claim 1 above, in further view of Shaffer et al. (Hereafter, Shaffer) U.S. Patent 6,748,426.

13. Regarding claims 7-8, Case in view of Aoki et al. discloses detecting a request for the web object from the terminal at the internetwork server; however, Case in view of Aoki et al. fail to teach web object is visually imperceptible, and a single pixel.

Shaffer discloses web object is visually imperceptible, and the web object is a single pixel (col. 16, lines 29-31).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Shaffer's teaching into Case in view of Aoki et al.'s method to establish the web object as small as a single pixel that is virtually undetectable on the terminal displayed page to reduce the size of the web object and the time it will take for this file to be transmitted to the client.

14. Claims 14-16 rejected under 35 U.S.C. 103(a) as being obvious over Case et al. (Hereafter, Case) U.S. Patent 6,601,098 in view of Aoki et al. (Hereafter, Aoki) U.S. Patent 6,757,255 in further view of Ronen U.S. Patent 6,026,441.

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15. Regarding claim 14 is substantially the same as claim 1 and is thus rejected for reasons similar to those in rejecting claim 1. However, Case in view of Aoki et al. fails to teach a Domain Name System (DNS) server on the internetwork, and the DNS server including a reference which maps the URL for the web object to an Internet Protocol address for an internetwork on the internetwork.

Ronen teaches a Domain Name System (DNS) server on the internetwork, and the DNS server including a reference which maps the URL for the web object to an Internet Protocol address for an internetwork on the internetwork (col. 3, lines 26-42).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Ronen's teaching into Case in view of Aoki et al.'s method to add the DNS server to the internetwork to obtain the IP address associated with the Internet name (URL) and establishes a connection with the Web server at that IP address in order to receive that server's web page.

16. Regarding claims 15 and 16 list all the same elements of claims 2 and 3, but in system form rather than method form. Therefore, the supporting rationale of the rejection to claims 2 and 3 applies equally as well to claims 15 and 16.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Grove et al. U.S. Patent No. 6,820,133

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919.

The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuoc H Nguyen
Examiner
Art Unit 2143

October 25, 2005


